

REMARKS

Reconsideration of the above-identified application is respectfully requested. Claims 1-4, 6-7, 12-15, 17-18, and 21-24 are presently pending in this application subsequent to the above amendments. By the present amendment, claims 21-24 have been added, and no claims have been cancelled or amended. Claims 5, 8-11, 16, and 19-20 have previously been cancelled without prejudice to their prosecution in a subsequent application. Support for the amendments can be found in the claims as filed. Thus, no new matter has been added.

35 U.S.C. § 103 – Downey, Koppenberg, and Hacker

The Examiner has rejected claims 1-2 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Downey (US Patent 912,368) in view of Koppenberg (US Patent 4,523,413) and Hacker (US Patent 2,524,105).

Applicant respectfully submits that Hacker is non-analogous art, and therefore cannot be relied upon under 35 U.S.C. § 103(a). In this regard, as noted in M.P.E.P. § 2141.01(a),

Under the correct analysis, any need or problem known in the field of endeavor at the time of the invention and addressed by the patent [or application at issue] can provide a reason for combining the elements in the manner claimed." *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1397 (2007). Thus a reference in a field different from that of applicant's endeavor may be reasonably pertinent if it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his or her invention as a whole.

Hacker discloses a double paned window, wherein suitable compressible insulating material 44 is interposed between rectangular wooden frames 20 and 35, which support respective glass panes 24 and 24', as illustrated in Figure 2.

Hacker is neither in the field of Applicant's endeavor, nor is it reasonably pertinent to the particular problem with which the present inventor was concerned. With respect to the fields of Applicant's endeavor, Hacker states that his invention "relates to improvements in double paned windows and more particularly those with each pane of

glass mounted in a separate frame" (col. 1 lines 1-4). In contrast, Applicant's claims are directed to a columbarium apparatus, and Applicant's disclosure notes under the heading "Field of the Invention" that the invention is "in the field of columbaria for storing cremains, and in particular systems for securing such columbaria against tampering". Therefore, Applicant respectfully submits that Hacker is in an entirely different field of endeavor than the present invention.

Furthermore, Applicant respectfully submits that Hacker is not reasonably pertinent to the problem with which the present inventor was concerned because the matter with which Hacker deals logically would not have commended itself to the present inventor's attention in considering his invention as a whole. According to Hacker, the principal objects of the invention disclosed therein are reducing air leakage in double paned windows, and providing spring pressure clamps which automatically compensate for variable dimensions in the direction of pressure and which are spaced at intervals around the perimeter and sufficiently close together to achieve certain advantages (col. 1 lines 32-37 and col. 2 lines 27-36). Applicant respectfully submits that the present inventor, in considering his invention as a whole, would not logically devote any attention to a reference directed to reducing air leakage in double paned windows or improving spring pressure clamps in double paned windows.

Accordingly, Applicant respectfully submits that Hacker is not in the field of Applicant's endeavor and is not reasonably pertinent to the problem with which the present inventor was concerned, and therefore Hacker is non-analogous art as defined in MPEP § 2141.01(a), and cannot be relied upon under 35 U.S.C. § 103(a).

Applicant respectfully submits that on this basis alone, the Examiner's rejection of claims 1-2 and 12 under 35 U.S.C. § 103(a) is improper and should be withdrawn. However, Applicant respectfully submits that even if Hacker is analogous art, Downey, Koppenberg, and Hacker fail to satisfy the requirements for a finding of a *prima facie* case of obviousness of claims 1-2 and 12.

In this regard, the requirements for a *prima facie* case of obviousness have been well established by the Court of Appeals for the Federal Circuit, and are concisely summarized in M.P.E.P. § 2142 and 2143, which confirm that three basic criteria must be

met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

The first of these requirements, the suggestion or motivation requirement, has recently been reformulated by the United States Supreme Court as requiring an "apparent reason". In this regard, in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ____ (2007), although the United States Supreme Court rejected a "rigid application" of the teaching-suggestion-motivation test for obviousness, the Court nevertheless emphasized (at p.14) that a finding of obviousness requires an "apparent reason" to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit."

In view of the Court's comments in *KSR*, the United States Patent and Trademark Office has instructed its Technology Center Directors that,

Therefore, in formulating a rejection under 35 U.S.C. § 103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed.

(Internal USPTO Memorandum to Technology Center Directors, from Margaret A. Focarino, Deputy Commissioner for Patent Operations, dated May 3, 2007).

However, it is equally clear from *KSR* that this "apparent reason" must not rely upon hindsight reasoning based upon the teachings of the applicant's or patentee's specification. In this regard, in *KSR*, the Supreme Court emphasized at page 17 that:

"A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning. See *Graham*, 383 U. S., at 36 (warning against a "temptation to read into the prior art the teachings of the invention in issue" and instructing courts to "guard against slipping into the use of hindsight") (quoting *Monroe Auto Equipment Co. v.*

Heckethorn Mfg. & Supply Co., 332 F. 2d 406, 412 (CA6 1964)))." [emphasis added]

Applicant respectfully submits that Downey, Koppenberg, and Hacker fail to satisfy all three of the above-noted requirements for a *prima facie* case of obviousness, and therefore, Applicant respectfully requests withdrawal of the rejection of claims 1-2 and 12 under 35 U.S.C. § 103(a).

Claim 1

Claim 1 recites:

1. A columbarium apparatus comprising:
 - at least one niche defined by a columbarium structure, and having an open end;
 - an inside door configured to cover the open end of the niche and attached to the columbarium structure by a first set of tamper resistant hardware;
 - an outside door configured to cover the inside door and attached to the columbarium structure by a second set of tamper resistant hardware such that an inner face of the outside door is supported by an outer face of the inside door;
 - a resilient material between the inside and outside doors and in contact with the inner face of the outside door and the outer face of the inside door;
 - wherein the first set of tamper resistant hardware is concealed by the outside door when the outside door is installed;
 - wherein the first set of tamper resistant hardware requires a first tool for removal, and wherein the second set of tamper resistant hardware requires a different second tool for removal.

Downey discloses a crypt comprising a plurality of vaults, wherein open ends of the vaults are covered with inner wall members 23, and ornamental facing material 28 is applied over the fronts of the inner wall members 23. A bolt 25, a washer 26, and an ornamental nut 27 appear to cooperate to hold the inner wall members 23 and ornamental facing material 28 in place. However, as the Examiner has acknowledged,

Downey fails to disclose or suggest an inside door attached to a columbarium structure by a first set of tamper resistant hardware, and an outside door attached to the columbarium structure by a second set of tamper resistant hardware, as recited in claim 1. Downey also fails to disclose or suggest a resilient material between the inside and outside doors and in contact with the inner face of the outside door and the outer face of the inside door, as recited in claim 1.

Koppenberg discloses a slab hanger-fastener 10 for supporting and securing slabs over vaults or niches. The slab hanger-fastener 10 comprises an elongate rectangular frame plate 12, which is configured to be mounted on a vault wall 29 using anchors 26 and 28. The elongate rectangular frame plate 12 is also configured to receive a fastener 32, which is used to support slabs, indicated as 64 and 66 in Figures 1 and 2, and as 104 and 106 in Figures 5 and 8. Applicant respectfully submits that Figures 1, 2, 5, and 8, and other aspects of Koppenberg's disclosure, illustrate that the elongate rectangular frame plate 12 is configured to be positioned proximate to one or more corners of slabs 64 or 66 (or 104 or 106).

Thus, Applicant respectfully submits that the elongate rectangular frame plate 12 in Koppenberg is not a door, but is rather a component of an apparatus that includes only a single layer of doors, illustrated as slabs 64, 66, 104, and 106, to cover openings of vaults or niches. Therefore, Applicant respectfully submits that it would not be obvious to combine the apparatus of Downey with the apparatus of Koppenberg as suggested by the Examiner because there is no apparent reason in either Downey or Koppenberg for an inside door attached to a columbarium structure by a first set of tamper resistant hardware, and an outside door attached to the columbarium structure by a second set of tamper resistant hardware, as recited in claim 1.

Moreover, Applicant respectfully submits that varying the elongate rectangular frame plate 12 to be an inner door would significantly change the principle of operation of the apparatus disclosed in Koppenberg, and it would significantly vary the function of the elongate rectangular frame plate 12. In Koppenberg, the elongate rectangular frame plate 12 is positioned proximate to corners of slabs in order to support the slabs at their respective corners, and covering an open end of a niche is a significantly different

function.

In summary, Applicant respectfully submits that Downey and Koppenberg fail to offer an apparent reason for an inside door attached to a columbarium structure by a first set of tamper resistant hardware, and an outside door attached to the columbarium structure by a second set of tamper resistant hardware, as recited in claim 1.

As discussed above, Hacker discloses interposing suitable compressible insulating material 44 between rectangular wooden frames 20 and 35, which support respective glass panes 24 and 24'. Applicant respectfully submits that Downey, Koppenberg, and Hacker fail to offer an apparent reason for a resilient material between inside and outside doors and in contact with the inner face of the outside door and the outer face of the inner door, as recited in claim 1.

Therefore, Applicant respectfully submits that Downey, Koppenberg, and Hacker fail to provide an apparent reason to combine their teachings in the manner of claim 1, and therefore fail to satisfy all three of the above-noted requirements for a *prima facie* case of obviousness. Therefore, Applicant respectfully requests withdrawal of the rejection of claim 1 under 35 U.S.C. § 103(a).

Claim 2

Claim 2 depends directly from independent claim 1. Accordingly, Applicant respectfully submits that claim 2 is allowable due to its dependency, and due to the additional subject matter that this claim recites, and Applicant respectfully requests withdrawal of the rejection of claim 2 under 35 U.S.C. § 103(a).

Claim 12

Claim 12 recites:

12. A columbarium apparatus comprising:
 - a columbarium structure defining a plurality of niches;
 - wherein each niche is defined by top, bottom, right side, left side, and rear walls and has an open end;

a horizontal ledge extending from the columbarium structure in proximity to the bottom wall of at least one niche;

an inside door configured to cover the open end of the at least one niche and attached to the columbarium structure by a first set of tamper resistant hardware;

an outside door configured to cover the inside door and conceal the first set of tamper resistant hardware;

a resilient material between the inside and outside doors;

the outside door being attached to the columbarium structure by a second set of tamper resistant hardware such that an inner face of the outside door is supported by an outer face of the inside door, and such that a lower edge of the outside door is supported by the ledge;

wherein the first set of tamper resistant hardware requires a first tool for removal, and wherein the second set of tamper resistant hardware requires a different second tool for removal.

Claim 12 is a claim with limitations similar to those recited as part of claim 1. Therefore, for reasons similar to those given in respect of claim 1, Applicant respectfully submits that Downey, Koppenberg, and Hacker fail to provide an apparent reason to combine their teachings in the manner of claim 12, and therefore fail to satisfy all three of the above-noted requirements for a *prima facie* case of obviousness. Therefore, Applicant respectfully requests withdrawal of the rejection of claim 12 under 35 U.S.C. § 103(a).

35 U.S.C. § 103 – Downey, Koppenberg, Hacker, and Darby

The Examiner has rejected claims 3 and 14 under 35 U.S.C. § 103(a) as being unpatentable over Downey in view of Koppenberg and Hacker and further in view of Darby (US Patent 6,250,025).

Claims 3 and 14 depend directly from independent claims 1 and 12 respectively. As explained above, Applicant respectfully submits that Hacker is non-analogous art and should not be applied in a rejection under 35 U.S.C. § 103(a), and Applicant also

respectfully submits that Downey, Koppenberg, and Hacker fail to provide an apparent reason to combine their teachings in the manner of claims 1 and 12. Moreover, Applicant respectfully submits that Darby fails to offer the necessary teachings. Accordingly, Applicant respectfully submits that claims 3 and 14 are allowable due to their dependencies, and due to the additional subject matter that these claims recite, and Applicant respectfully requests withdrawal of the rejection of claims 3 and 14 under 35 U.S.C. § 103(a).

35 U.S.C. § 103 – Downey, Koppenberg, Hacker, and Nelson

The Examiner has rejected claims 7 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Downey in view of Koppenberg and Hacker and further in view of Nelson *et al.* (US Patent 4,685,402).

Claims 7 and 13 depend directly from independent claims 1 and 12 respectively. As explained above, Applicant respectfully submits that Hacker is non-analogous art and should not be applied in a rejection under 35 U.S.C. § 103(a), and Applicant also respectfully submits that Downey, Koppenberg, and Hacker fail to provide an apparent reason to combine their teachings in the manner of claims 1 and 12. Moreover, Applicant respectfully submits that Nelson *et al.* fails to offer the necessary teachings. Accordingly, Applicant respectfully submits that claims 7 and 13 are allowable due to their dependencies, and due to the additional subject matter that these claims recite, and Applicant respectfully requests withdrawal of the rejection of claims 7 and 13 under 35 U.S.C. § 103(a).

35 U.S.C. § 103 – Downey, Koppenberg, Hacker, and Darby

The Examiner has rejected claim 18 under 35 U.S.C. § 103(a) as being unpatentable over Downey in view of Koppenberg and Hacker and further in view of Darby.

Claim 18 depends directly from independent claim 12. As explained above, Applicant respectfully submits that Hacker is non-analogous art and should not be applied

in a rejection under 35 U.S.C. § 103(a), and Applicant also respectfully submits that Downey, Koppenberg, and Hacker fail to provide an apparent reason to combine their teachings in the manner of claim 12. Moreover, Applicant respectfully submits that Darby fails to offer the necessary teachings. Accordingly, Applicant respectfully submits that claim 18 is allowable due to its dependency, and due to the additional subject matter that this claim recites, and Applicant respectfully requests withdrawal of the rejection of claim 18 under 35 U.S.C. § 103(a).

35 U.S.C. § 103 – Downey, Koppenberg, Hacker, and Pangburn et al.

The Examiner has rejected claims 4 and 15 under 35 U.S.C. § 103(a) as being unpatentable over Downey in view of Koppenberg and Hacker and further in view of Pangburn *et al.* (US Patent 3,754,805).

Claims 4 and 15 depend directly from independent claims 1 and 12 respectively. As explained above, Applicant respectfully submits that Hacker is non-analogous art and should not be applied in a rejection under 35 U.S.C. § 103(a), and Applicant also respectfully submits that Downey, Koppenberg, and Hacker fail to provide an apparent reason to combine their teachings in the manner of claims 1 and 12. Moreover, Applicant respectfully submits that Pangburn *et al.* fails to offer the necessary teachings. Accordingly, Applicant respectfully submits that claims 4 and 15 are allowable due to their dependencies, and due to the additional subject matter that these claims recite, and Applicant respectfully requests withdrawal of the rejection of claims 4 and 15 under 35 U.S.C. § 103(a).

35 U.S.C. § 103 – Downey, Koppenberg, and Hacker

The Examiner has rejected claims 6 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Downey in view of Koppenberg and Hacker.

Claims 6 and 17 depend directly from independent claims 1 and 12 respectively. Accordingly, Applicant respectfully submits that claims 6 and 17 are allowable due to their dependencies, and due to the additional subject matter that these claims recite, and

Applicant respectfully requests withdrawal of the rejection of claims 6 and 17 under 35 U.S.C. § 103(a).

New Claims

As explained above, Applicant respectfully submits that there is no apparent reason in any of the references cited by the Examiner for an inside door attached to a columbarium structure by a first set of tamper resistant hardware, and an outside door attached to the columbarium structure by a second set of tamper resistant hardware, as recited in new claims 21-24. Accordingly, Applicant respectfully submits that new claims 21-24 are allowable.

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For the foregoing reasons, Applicants respectfully submit the application is in compliance with 35 U.S.C. § 101 *et. seq.* Thus, Applicants respectfully request allowance of all pending claims, 1-4, 6-7, 12-15, 17-18, and 21-24. Applicants have made a good faith effort to place this application in condition for allowance. However, should the Office Action have any further questions about the application, for example the particular language in the claims, Applicants respectfully request the Office Action to contact the undersigned attorney at (425) 455-5575 to resolve the matter. A check is included herewith to pay for the extension of time and additional claims. If any need for any additional fee is found, for any reason, kindly this a petition therefore and charge any necessary fees to Deposit Account 07-1897.

DATED this 21st day of November, 2007.

Respectfully submitted,

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Enclosures:

- Transmittal Form (with Certificate of Mailing)
- Petition for Extension of Time (3 months)
- Check No. 28818 for \$525.00
- Return Postcard